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March 15, 2010

Donna Napalitano, Esq.
Deputy Bureau Chief
Nassau County Attorney Office
One West Street
Mineola, New York 11501-4820

Re: Darryl T. Coggins v County of Nassau, et al.
Docket No.: 07-CV-3624(JFB)(AKT)

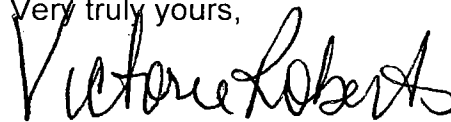
Dear Ms. Napalitano:

Enclosed please find the original and one copy of the testimony of Nicholas Occhino, taken at an examination before trial on February 25, 2010 in the above-referenced matter.

Please have the witness execute the original and return to us as soon as possible. Please note that any necessary changes are to be made on a separate sheet of paper and notarized, with the reason for the change or correction set forth. The copy is for your files.

Please note that if the original is not signed and returned to us within thirty days of the date hereof, we shall utilize the same at trial as if signed and sworn to.

Very truly yours,



VICTORIA ROBERTS
Legal Assistant

Enclosures

:vr

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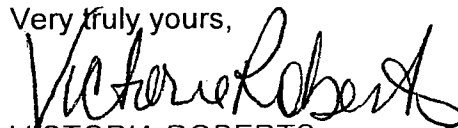
During the depositions of Defendants Alexander J. Barnych and Nicholas Occhino, request for documents were made. To-date, we have no record of receiving the requested documents. Please allow this to serve as a formal written demand for documents. Requests were made as follows:

- **Defendant Alexander J. Barnych deposed February 25, 2010:**
 - Page 79: complete records of Internal Affairs Unit;
 - Page 91: document relating to vouchering of gun and magazine by Nassau County of Floral Park Police Departments;
 - Page 94: any photographs of gun, car or anything else taken at the time of the event; and
 - Page 99: case file.
- **Defendant Nicholas Occino deposed February 25, 2010:**
 - Page 85: entire file of Internal Affairs Unit.

As quite some time has passed since these requests were made, it would be greatly appreciated if this matter were given your immediate attention.

Thank you for your cooperation. We look forward to hearing from you in the near future.

Very truly yours,



VICTORIA ROBERTS
Legal Assistant

Enclosures
:vr

COPY

1

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----x
5 DARRYL T. COGGINS,

6 Plaintiff,

7 - against -

8 COUNTY OF NASSAU, NASSAU COUNTY POLICE
9 DEPARTMENT, POLICE OFFICER JAMES VARA,
10 in his individual and official capacity,
11 and POLICE OFFICER CRAIG BUONORA, in his
12 individual and official capacity, and
13 JOHN DOES "1-10," in their individual
14 and official capacity,

15 Defendants.

16 Docket No. 07-CV-3624
17 -----x

18 50 Clinton Street
19 Hempstead, New York

20 February 25, 2010
21 10:20 a.m.

22 Deposition of the Defendant, NASSAU
23 COUNTY POLICE DEPARTMENT by NICHOLAS OCCHINO,
24 pursuant to Notice, before Jennifer Fuchs, a
25 Notary Public of the State of New York.

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Babylon, New York 11702
516-938-4000

A P P E A R A N C E S:

LAW OFFICES OF FREDERICK K. BREWINGTON

Attorney for Plaintiff

50 Clinton Street, Suite 501

Hempstead, New York 11550

BY: IRA FOGELGAREN, ESQ.

DONNA NAPOLITANO, ESQ.

Deputy Bureau Chief

Attorney for Defendants County of Nassau,

Nassau County Police Department and Police

Officer James Vara

Nassau County Attorney

One West Street

Mineola, New York 11501

LAW OFFICES OF LAURENCE JEFFREY WEINGARD, ESQ.

Attorney for Defendant Police Officer Craig

Buonora

250 West 57th Street, Suite 401

New York, New York 10107

BY: LAURENCE JEFFREY WEINGARD, ESQ.

1
2 IT IS HEREBY STIPULATED AND
3 AGREED by and between the attorneys for
4 the respective parties herein, that the
5 filing, sealing and certification of the
6 within deposition be waived.

7 IT IS FURTHER STIPULATED AND
8 AGREED that all objections, except as to
9 the form of the question, shall be
10 reserved to the time of the trial.

11 IT IS FURTHER STIPULATED AND
12 AGREED that the within deposition may be
13 sworn to and signed before any officer
14 authorized to administer an oath with
15 the same force and effect as if signed
16 and sworn to before the Court.

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1
2 N I C H O L A S O C C H I N O, called as a
3 witness, having been duly sworn by a
4 Notary Public, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. FOGELGAREN:

8 Q. Please state your full name for
9 the record.

10 A. Nicholas Occhino.

11 Q. What is your address?

12 A. 1490 Franklin Avenue, Mineola,
13 New York 11501.

14 Q. Good morning, Mr. Occhino.

15 A. Good morning.

16 Q. My name is Ira Fogelgaren. I
17 represent the plaintiff, Darryl Coggins, in
18 this action. I am going to be asking you some
19 questions about the facts and circumstances in
20 this lawsuit.

21 If at any time you don't
22 understand my question, please let me know,
23 and I will try and rephrase it as best I can.
24 Please keep your answers verbal. The reporter
25 cannot take down nods of the head. Please

Occhino

wait for me to finish my questions before you start your answers. She can't take down both of us speaking at the same time. Is that okay?

A. Yes.

Q. If at any time you need a break, let me know, and we will accommodate you.

Are you employed currently?

A. Yes.

Q. Where are you employed?

A. Nassau County Police Department.

Q. When did you first start employment at the Nassau County Police Department?

A. October 19, 1990.

Q. What position do you currently hold with the Nassau County Police Department?

A. Detective.

Q. How long have you been a detective?

A. Approximately nine years.

Q. Are you assigned to a certain squad at the present time?

A. Yes.

Occhino

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Q. Which one?

A. The District Attorney Squad.

Q. How long have you been with the District Attorney Squad?

A. Approximately six months.

Q. What are your duties at the District Attorney Squad?

A. We conduct wiretaps and undercover operations.

Q. Prior to being on the District Attorney Squad, where were you assigned prior, immediately prior, to that?

A. The 3rd Squad.

Q. From when to when were you on the 3rd Squad?

A. I was there approximately six years.

Q. Were you a detective that entire time?

A. Yes.

Q. What were your duties at the 3rd Squad?

A. General duties, respond to scenes, interview persons, whether that be

Occhino

witnesses, victims, arrest offenders.

Q. Were you working in the 3rd Squad on October 9, 2004?

A. Yes.

Q. Prior to being in the 3rd Squad, where were you assigned?

A. The 7th Squad.

Q. Do you recall from when to when?

A. I was there just shy of three years.

Q. Do you recall what your duties were at the 7th Squad?

A. The same as the 3rd Squad, respond to scenes, arrest offenders, interview people.

Q. Where were you assigned prior to the 7th Squad?

A. The Bureau of Special Operations.

MR. WEINGARD: Can I just interrupt?

How many years were you at the 7th?

THE WITNESS: Approximately three years, perhaps a little bit less.

Occhino

Q. Were you a detective when you were at the Bureau of Special Operations?

A. No.

Q. What position did you have at that time?

A. Police officer.

Q. What were your duties at the Bureau of Special Operations?

A. We were the SWAT team. We responded to barricades and emergency situations, and we also did street-level crimes, drugs, narcotics.

Q. I'm sorry. Did you say for how long you were at the Bureau of Special Operations?

A. Approximately a little over three years.

Q. Where were you assigned prior to that?

A. The 7th Precinct.

Q. Do you recall from when to when?

A. From sometime in 1991 to sometime in 1997.

Q. What were your duties there?

Occhino

A. General patrol duties. I also worked plainclothes.

Q. Did you have an assignment with the Nassau County Police Department prior to that one, prior to being at the 7th Precinct?

A. Well, I was in the police academy.

Q. Which police academy did you attend?

A. Nassau County.

Q. When did you attend the Nassau County Police Academy?

A. Well, I was hired October 19, 1990, so I started the police academy shortly thereafter.

Q. What's your date of birth?

A. February 5, 1962.

Q. What's your highest level of education?

A. Associate degree.

Q. From where?

A. Nassau Community College.

Q. When did you get it?

A. I'm trying to think.

Occhino

Q. If you can't remember --

MR. WEINGARD: We can leave a blank, and you can fill it in.

A. I could only speculate.

MS. NAPOLITANO: Don't speculate. You know or you don't know.

MR. WEINGARD: We will leave a blank in the record, and when you read your testimony, just put in the date.

TO BE FURNISHED: _____

Q. What was the degree in?

A. General studies.

MR. WEINGARD: Is that like a liberal arts degree?

THE WITNESS: Yes, yes.

MS. NAPOLITANO: Can I just, you know, Ira, this is your deposition, I understand, but I prefer for one attorney to ask questions at a time.

MR. FOGELGAREN: Okay.

MR. WEINGARD: I assume that's directed to me.

MS. NAPOLITANO: Yes, sir.

MR. WEINGARD: And I certainly

Occhino

will try to do that.

MS. NAPOLITANO: Thank you.

Q. Have you worked for any other law enforcement agencies?

A. No.

Q. Were you in the military?

A. No.

Q. Have you ever been disciplined while you were employed by the Nassau County Police Department?

MS. NAPOLITANO: Objection to form.

You can answer.

A. I don't understand that question.

Q. Has anybody ever made complaints or have you ever received any complaints about your performance as a police officer while you were serving for the Nassau County Police Department?

A. That's possible. I don't recall any specifics.

Q. Do you recall if you were ever disciplined as a result of any possible complaints?

Occhino

MS. NAPOLITANO: Objection.

You can answer.

THE WITNESS: I'm sorry?

MS. NAPOLITANO: I objected. You
can answer.

THE WITNESS: Can you repeat
that?

Q. Have you ever been disciplined as
a result of any complaints made against you as
a police officer/detective at the Nassau
County Police Department?

A. I recall I received a Form 59
once.

Q. What's a Form 59?

A. It's an in-house form.

Q. What was that for?

A. When I was on patrol in the 7th
Precinct, I was involved in an auto accident.

MR. WEINGARD: I'm sorry?

THE WITNESS: When I was on
patrol in the 7th Precinct, I was
involved in an auto accident.

Q. Did you ever receive any training
as a police officer in securing a crime scene?

Occhino

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2 A. I would have received that
3 training for detective.

4 Q. Where would you have received
5 that training?

6 A. That would be on the job, learn
7 as you go, and I may have received some sort
8 of training regarding that in the police
9 academy.

10 Q. Did you receive any training -
11 and again, this is all with regard to your
12 employment with the Nassau County Police
13 Department - with regard to securing firearms
14 recovered at crime scenes?

15 A. I would have also received
16 training in detective school. I do not recall
17 any specific training regarding specifically
18 firearms.

19 Q. Now, you said "detective school."
20 Was there a specific detective school that you
21 attended?

22 A. When you make the rank of
23 detective, they send you for a few weeks of
24 classroom-type training.

25 Q. Where was that, if you can

Occhino

remember?

MR. WEINGARD: Can we go off the record for a second?

(Discussion off the record.)

A. I believe it was at the police academy.

MR. WEINGARD: That's your best memory.

THE WITNESS: Yeah, it wasn't in a non-police facility. Yes, the police academy.

Q. Did any of that training consist of securing crime scenes?

A. I believe so, yes.

Q. Did any of that training consist of securing of firearms recovered at crime scenes?

A. Once again, I don't recall those specifics regarding a firearm.

Q. On October 9, 2004, were you aware if there was a procedure at the Nassau County Police Department with regard to securing a crime scene?

A. I could assume that's the date in

Occhino

question?

MR. FOGELGAREN: Yes.

A. Can you repeat that question again, please?

Q. On that day, were you aware if the Nassau County Police Department had a procedure for securing crime scenes?

A. I could only assume there is a procedure.

MS. NAPOLITANO: I don't want you to assume. If you don't know, you don't know. Don't assume.

Q. Do you have any recollection, if there was a procedure for securing crime scenes as of that time, what it was?

A. I don't know of any specific procedures.

Q. Did you have a custom and practice at that time as to how you would secure a crime scene as a detective in the Nassau County Police Department?

MS. NAPOLITANO: Objection as to form. Do you mean he himself?

MR. FOGELGAREN: Yes.

Occhino

MS. NAPOLITANO: Separate from
the police department?

MR. FOGELGAREN: He himself as a
member of the police department, yes.

A. Yes.

Q. What was that?

A. If I may speak, it's -- that
question can't be answered in and of itself,
because every crime scene is different, and
you approach every scene and every situation
differently.

Q. Do you have any recollection of
the events of October 9, 2004?

A. Some.

Q. What do you recall?

A. I recall I was working that day.

Q. Do you recall what shift you were
working?

A. A day tour.

Q. Do you know what the hours would
have been?

A. Tours have slightly changed, but
basically the hours would be 7 a.m. to 5 p.m.

Q. At that time, were you working in

Occhino

the 3rd Squad?

A. Yes.

Q. Do you recall where you reported to work on that day?

A. Did I report?

Q. Where you reported to work.

A. The 3rd Squad.

Q. Where was it located at that time?

A. 214 Hillside Avenue.

Q. Did you have an assignment for that day?

A. I probably had many assignments for that day.

Q. Were you given assignments for that day, a particular time of that day?

A. Again, I don't recall. I could only assume.

MS. NAPOLITANO: Don't assume.

Q. Were you working with anybody else that day?

A. I worked probably with many people that day.

Q. Did you keep a memo book at that

Occhino

time?

A. No.

Q. Did you keep any daily records?

A. I don't recall.

Q. Have you reviewed any documents in order to prepare for this deposition today?

A. Yes.

Q. What documents did you review?

A. It was a copy of the letter that I wrote for and at Internal Affairs.

Q. Do you have a copy of that letter with you today?

A. No.

MR. FOGELGAREN: Counsel, have we been provided with that?

MS. NAPOLITANO: Can I go off the record for a second?

MR. FOGELGAREN: Yes.

(Discussion off the record.)

MR. WEINGARD: Before we go any further, I'd like to just make a record entry indicating that the reason that I'm appearing today is because of Judge Tomlinson's ruling, along with Judge

Occhino

Spatz' affirmance of that ruling, that apparently if we proceed by not showing up, we do so at our own peril.

If that's the case, I had no choice but to follow the judge's directive and not put my client at peril. So I am here. I am reluctantly here. I don't want to be here. We still believe my client has complete and absolute immunity in connection with this matter. But nevertheless, given this unusual position taken by the magistrate judge, I have no options except to be here.

Q. Did you review any other documents aside from what you've mentioned?

A. No.

Q. Other than with the county attorney, did you have any discussions with anybody at the Nassau County Police Department about your testimony you were going to give at this deposition?

A. There was another person in the room.

Occhino

MS. NAPOLITANO: It was an intern
in the county attorney's office.

Q. I am talking about did you have
any conversations with anybody at the police
department?

A. No.

MR. WEINGARD: Can we have a time
frame on that, please?

Q. In the two weeks or month before
just to prepare for this deposition.

A. No.

Q. On October 9, 2004, do you recall
responding to a scene at Jericho Turnpike and
Holland Avenue in Floral Park?

A. Yes.

Q. How did you become aware of
having to respond to that area?

A. I don't recall.

Q. Were you in a vehicle at the
time?

A. No.

Q. Do you know where you were when
you first learned about a situation going on
at that location?

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A. Somewhere in the 3rd Precinct station house.

Q. How did you become aware of what was going on there?

A. I don't recall.

Q. After learning of what was going on there, what did you do?

A. I responded there with Detective Barnych.

MS. NAPOLITANO: Spell it for the court reporter.

THE WITNESS: B-A-R-N-Y-C-H.

Q. Was Detective Barnych your partner at the time?

A. No. If you can reframe that question, "partner."

Q. Were you assigned to go to that area with Detective Barnych?

A. I went with him there.

Q. How did you go there?

A. By car.

Q. What type of car did you go in?

A. I don't know the make or model.

Q. Was it a marked Nassau County

Occhino

Police Department vehicle?

A. It would have been an unmarked detective car.

Q. Did that car have a number assigned to it?

A. The car would have a number assigned to it.

Q. Did the car have a police radio?

A. I don't recall.

Q. Did you have a police radio at that time on you?

A. I don't recall.

Q. Do you know if Detective Barnych had a police radio on him?

A. I don't recall.

Q. While you were in the car, were you in communication with anybody from the Nassau County Police Department?

A. I don't recall.

Q. Were you told what location to respond to?

A. I don't recall if I personally was told what location to respond to.

Q. Did you have any conversations

Occhino

with Detective Barnych at that time about where you were going to?

A. I don't recall.

Q. At the time you were going to the location at Jericho Turnpike and Holland Avenue, do you remember what information you were given what you were going to respond to?

A. No.

MS. NAPOLITANO: Objection as to form.

MR. WEINGARD: I join in the objection.

MS. NAPOLITANO: You have to wait for me to object or not.

Q. Did there come a time that you arrived at the location of Jericho Turnpike and Holland Avenue?

A. Yes.

Q. When you got there, what did you observe?

A. A sedan, which was parked, and Officer Vara.

Q. Were there any other police vehicles at that location, other than yours?

Occhino

A. I don't recall.

Q. Did you see any other members of the Nassau County Police Department other than Officer Vara when you first got there?

A. When I first got there, I don't recall.

Q. Did you see anybody else outside of the sedan other than Officer Vara?

MS. NAPOLITANO: Objection to form.

You can answer.

MR. WEINGARD: Join in it.

A. It was a public corner, a public street.

Q. Did you see anybody else besides Detective --

A. I don't recall.

Q. -- Vara?

MS. NAPOLITANO: Let him finish his question.

Q. Did you see anybody else in the street other than Officer Vara?

A. I don't recall.

Q. Did you look to see if anybody

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Occhino

was in the sedan at that time?

A. I did not see anybody in that sedan at that time.

Q. Did you leave your car at that time?

MS. NAPOLITANO: Objection to form.

You can answer.

A. At sometime during the time I was there I would have, and I did, leave my car.

Q. Where did you go?

A. To the vicinity of Jericho Turnpike and Holland -- I believe it's Avenue.

Q. Did you arrive at the vicinity of Jericho Turnpike and Holland Avenue?

A. Yes.

Q. Outside the car?

A. Yes.

Q. Do you recall when you arrived at that area what you observed when you were outside of the car?

MR. WEINGARD: Excuse me for one moment. Have we established approximately what time this is taking

Occhino

place?

MR. FOGELGAREN: Okay. Let me ask you this.

Q. What time did your car arrive at Jericho Turnpike and Holland Avenue?

A. I don't recall the time.

Q. Do you know how long you remained inside your car once the car arrived?

A. No.

Q. When you left your vehicle, where did you go from the vehicle physically?

A. To Jericho Turnpike and Holland.

Q. How far was that from where your vehicle was parked?

A. I don't know.

Q. When you got to Jericho Turnpike and Holland Avenue, did you observe anything at that time?

A. I observed a sedan parked facing west and Officer Vara.

Q. At that time, when you observed the sedan facing west, was anybody inside the sedan?

A. No.

Occhino

Q. Who was with you at that time, when you arrived at Jericho Turnpike and Holland Avenue?

A. Detective Barnych.

Q. Were there any other Nassau County police personnel at that location at that time?

A. I don't recall.

Q. Did you have a conversation with Officer Vara at that time?

A. I don't recall.

Q. Do you know if Detective Barnych had a conversation with Officer Vara?

A. Yes, he did.

Q. Did you hear any part of that conversation?

A. Yes, I did.

Q. Do you have a recollection of that conversation?

A. I recall a part of that conversation.

Q. What do you recall?

A. I recall Officer Vara stating he heard a sound of something metal like hitting

Occhino

and/or striking the ground.

Q. Did you hear anything else about that conversation?

A. I possibly heard other things, but I don't recall the specifics of that conversation.

Q. Did anybody mention a gun at that location at that time?

A. I don't recall.

Q. Did Officer Vara state if any other police department personnel were at that location --

A. I don't recall.

Q. -- prior to you and Detective Barnych getting there?

A. I don't recall.

Q. Did Officer Vara mention anything about a clip being recovered at that site?

MR. WEINGARD: Excuse me. Are we talking about the site where the gun was recovered or another site?

MR. FOGELGAREN: I'll rephrase that.

Q. You heard Officer Vara mention he

Occhino

heard the sound of something metal like striking the ground; is that correct?

A. That's what I recall.

Q. Did he tell you where that was?

A. It was not at Jericho Turnpike. I believe it was at and/or near a driveway of a private home within that vicinity.

Q. Did he tell you which private home it was?

A. I don't recall the specifics of what he said.

Q. Do you know if he pointed out a particular private home at that time, as to where he heard the sound of something metal like striking the ground?

A. Pointed out to who?

Q. To you.

A. I don't recall.

Q. Do you know if he pointed a private home to Detective Barnych at that time?

A. I don't recall.

Q. How long did you remain at the vicinity of Jericho Turnpike and Holland

Occhino

Avenue?

A. I don't know.

Q. After this conversation between Officer Vara and Detective Barnych took place, what happened after that?

A. After the initial conversation between Officer Vara and Detective Barnych at Jericho Turnpike, Detective Barnych and I ended up by foot at a driveway of a private home, which I believe was on the side street, which I believe was Holland Avenue. It was a short walking distance from Hempstead -- not Hempstead Turnpike, excuse me, Jericho Turnpike.

Q. Why did you go to that location at that time?

A. Because obviously that was the scene.

Q. Did Officer Vara point that location out to you?

A. I don't know who pointed it out.

Q. Do you recall what street address that that driveway was located on Holland Avenue?

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A. No.

Q. What did you do when you got to that driveway?

A. I just stood there.

Q. When you went to that driveway, who went with you?

A. Detective Barnych.

Q. Where on the driveway did you stand?

A. I don't recall specifically where.

Q. Were there any cars in the driveway?

A. I don't recall.

Q. Where did Detective Barnych go at that time?

A. In and about the driveway.

Q. Were you observing what Detective Barnych was doing when he went in and about that driveway?

A. I don't recall.

Q. Was there anybody else at that driveway at that time besides yourself and Detective Barnych?

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A. Yes.

Q. Who was there?

A. There were uniform police officers.

Q. How many?

A. I don't recall.

Q. Do you recall from what department they were from?

A. There were Floral Park police officers there, and I recall there being Nassau County police officers.

Q. Did you have a conversation with any of those uniform police officers?

A. I don't recall.

Q. Do you know if any of those uniform police officers said anything to you?

A. I do remember also Detective Mike Fannon being there. I may or may not have had a conversation with him. I don't recall specifics.

MR. WEINGARD: Can we clarify as to whether Fannon is with one department or the other?

MR. FOGELGAREN: I was just about

Occhino

to ask.

Q. Detective Fannon, do you know where he was assigned to at that time?

A. Yes, Nassau County Police Department, the Crime Scene Unit.

Q. At that point in time, did you have an understanding of what occurred previously at that location at Jericho Turnpike and Holland Avenue?

A. At the time of?

Q. You were in the driveway.

MS. NAPOLITANO: Objection to form.

If you understand, you can answer.

MR. WEINGARD: I join.

THE WITNESS: Answer it?

MS. NAPOLITANO: If you understand the question, you can answer.

A. I had a basic understanding.

Q. What was your understanding at that time?

A. That a car stop was made by 3rd Precinct uniform, and a subject from the car

Occhino

ran away.

Q. Do you know who provided that information to you?

A. To me specifically? No.

Q. Do you know if that information was provided to Detective Barnych?

A. Sure.

Q. Do you know who provided that information to him?

A. I can say Police Officer Vara would have provided information regarding that incident.

Q. Was Officer Vara one of the officers who made the car stop?

MR. WEINGARD: Objection as to form. There's no indication that there was more than one.

A. Yes.

Q. Did he tell you that?

A. I don't recall.

Q. Did Officer Vara indicate who else was involved, which other uniform officers were involved, in the initial car stop?

Occhino

A. I don't recall.

MR. FOGELGAREN: It's 11:00. Can we try to call Judge Tomlinson?

MS. NAPOLITANO: Yes.

(Discussion off the record.)

(Recess taken.)

MR. FOGELGAREN: Could you read back the last question.

(Record read.)

MR. WEINGARD: I object to the question. That should be an objection as to form.

Q. Did you have any conversations with Detective Fannon when you were in that driveway?

A. I don't recall.

Q. Do you know if Detective Barnych had any conversations with Detective Fannon?

MR. WEINGARD: How does he spell that name?

MR. FOGELGAREN: Which one?

MR. WEINGARD: Fannon.

MR. FOGELGAREN: F-A-N-N-O-N.

A. They spoke.

Occhino

Q. Did you hear the conversation or parts of the conversation?

A. I don't recall.

Q. Do you have a recollection of some substance of that conversation?

A. No.

Q. Did you speak with any of the uniform officers present at that driveway?

A. I don't recall.

Q. Was there anybody else, beside uniform police officers or other Nassau County Police Department officers, on that driveway at that time?

MR. WEINGARD: You're talking about both detectives and uniforms?

Q. Anybody else besides police personnel from Nassau County or Floral Park, anybody else?

A. Civilians?

MR. FOGELGAREN: Yes.

A. I don't believe so, when I was there.

Q. How long were you at that driveway for?

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A. I don't recall.

Q. What did you do while you were at that driveway?

A. Not much.

Q. Did you learn anything else about what had occurred at that site?

A. Again, I learned a subject ran away on foot through the driveway towards the rear of the house and through and/or over some type of fence.

Q. Did you see a fence near that driveway?

A. I believe there was a fence in the front of the driveway.

Q. Was that the fence that you learned that the subject had gone over?

A. No. I believe the fence he went over was in the rear of the driveway and/or the home.

Q. Did you learn if anything was recovered in that area by any police officer?

MS. NAPOLITANO: Objection to form.

A. A handgun.

Occhino

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2 Q. Who informed you that a handgun
3 was recovered at that area?

4 A. I saw a handgun.

5 Q. Where did you see the handgun?

6 A. In the driveway of the home we
7 are referring to.

8 Q. Were there any cars or other
9 vehicles in that driveway at that time?

10 A. I don't recall.

11 Q. Was Officer Buonora at that
12 location at that time?

13 A. I don't recall.

14 Q. Did you learn if Officer Buonora
15 had been at that location previous to you
16 arriving that day?

17 MR. WEINGARD: Objection as to
18 form.

19 A. I don't recall.

20 Q. Did you see Officer Buonora at
21 any time from when you had arrived in the
22 vehicle at Jericho Turnpike and Holland Avenue
23 up until the point in time when you arrived at
24 the driveway?

25 A. I don't recall seeing Officer

Occhino

Buonora.

Q. Did you hear Officer Vara mention Officer Buonora?

A. I don't recall.

Q. Where exactly did you see this handgun?

A. When you're facing the home, the driveway is to the left of the home. The gun was on the ground in the driveway. I don't recall the specifics or the logistics of exactly where it was, but it wasn't in the very rear of the driveway, and it wasn't in the front of the house. It was somewhere in the middle, give or take.

Q. Had any police officer secured that handgun?

A. Again, I saw it on the ground. I don't recall.

Q. Did you have a conversation with anybody at that driveway with regard to that handgun?

A. I don't recall any conversations or specifics.

Q. Do you recall what type of

Occhino

handgun it was?

A. No.

Q. You don't know what caliber handgun it was?

A. No.

MR. WEINGARD: Are we talking about did he know at that time, or does he know now?

Q. At that time, did you know what caliber the handgun was?

A. I don't recall.

Q. At that time, did you know what make the handgun was?

A. No.

Q. What was the closest you got to that handgun at that site?

A. I can't give you precise measurements, a few feet.

Q. Did you observe anything about that handgun at that site?

A. I don't recall.

Q. Did you ever look at that handgun to see if you could see a serial number on it?

A. I did not, no.

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Q. Do you know what color it was?

A. No.

Q. The fence that you described being in the back of the home, how far was the gun from that fence?

A. I don't know.

Q. Do you know if it was more than 10 feet away from that fence?

MR. WEINGARD: Objection as to form.

A. I don't know. It's possible.

Q. Did you see anything else at that driveway?

MS. NAPOLITANO: Objection as to form.

You can answer.

A. I don't recall.

Q. On that premises, did you go anywhere else on that premises other than the driveway?

A. I would have went to the front of the house, the sidewalk.

Q. Did you have any particular assignment at that time being at that house?

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2 A. No. Basically my assignment
3 would be assisting, would be if Detective
4 Barnych asked me to do something for him, I
5 would do it.

6 Q. Was there a police officer in
7 charge of that location?

8 A. Possibly.

9 MR. WEINGARD: Excuse me. At
10 what time are we speaking of?

11 Q. When you were in the driveway, do
12 you know if there was a police officer who was
13 in charge of that area?

14 A. I don't know who would be in
15 charge of that driveway.

16 Q. Did Detective Barnych give you
17 any instructions as to what to do while you
18 were at that location?

19 A. I don't recall him giving me any
20 instructions at all.

21 Q. Other than seeing that handgun,
22 anything else that you noted?

23 MS. NAPOLITANO: Objection as to
24 form.

25 You can answer.

Occhino

MR. WEINGARD: Join in it.

A. I may have. I don't recall.

Q. Did you see an ammunition clip at that location?

MS. NAPOLITANO: Objection as to form. At the driveway?

MR. FOGELGAREN: At the driveway.

MR. WEINGARD: Join in the objection.

A. I don't recall.

Q. Did you see an ammunition clip anywhere in proximity to that house where the driveway was?

A. I recall seeing an ammunition clip. To my best recollection, it was on Jericho Turnpike.

Q. Did you see that ammunition clip before you arrived at the driveway?

A. Yes.

Q. Where was that ammunition clip when you first saw it?

A. To my best recollection, it was on Jericho Turnpike, a little bit west of Holland Avenue on or near the curb.

Occhino

MR. WEINGARD: Can I have that
answer read back, please.

(Record read.)

Q. Was it in proximity to a vehicle?

A. Yes.

Q. What vehicle?

A. A sedan, I believe it was four
door. It would have been the subject's
vehicle.

Q. Did somebody point that
ammunition clip out to you, or is this
something that you observed on your own?

A. I don't recall. It could be one
or both of those things you just said.

Q. Did you do anything with respect
to that ammunition clip after you first
observed it?

A. No.

Q. Do you know if any other police
officer did?

A. I don't know.

Q. Did you see any other police
officers doing anything with regard to the
handgun that you observed when you were in the

Occhino

driveway?

A. No. I just saw the handgun in
and of itself on the ground.

Q. Did you make any notes while you
were at that location?

A. I don't recall.

Q. Did you hear any radio
transmissions while you were at that location?

MS. NAPOLITANO: I am going to
object to the form. There was Floral
Park and Nassau County Police there both
with different radios, so do you want to
be specific with him?

MR. FOGELGAREN: First I want to
know whether he heard any radio
transmissions, then I will ask him.

A. Police officers carry radios. I
don't recall hearing any radio transmissions.

Q. Prior to arriving at the site of
Jericho Turnpike and Holland Avenue, did you
hear any radio transmissions with regard to
what was going on at that location?

A. I don't recall.

Q. Did anything else happen in the

Occhino

vicinity of that driveway other than what
you've mentioned up until now?

A. Did anything happen when?

Q. After you saw the handgun.

A. It's possible. I don't know.

Q. After you saw the handgun, do you
recall if you had any conversations with any
police officers at that site?

A. It's possible, but I don't recall
any specific conversations.

Q. Did you eventually leave that
area?

A. Yes.

Q. Do you recall when you left that
area?

A. No.

Q. Did you make any notes as to when
you left that area?

A. I don't recall.

Q. Do you know if you --

A. Me specifically?

MR. FOGELGAREN: Yes.

A. I don't recall.

Q. How did you leave that area?

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A. In a car.

Q. In what car did you leave the area?

A. In the same car that we drove there in.

Q. When that car arrived there, did you notify anybody at the Nassau County Police Department that you had arrived at the location?

A. Me specifically?

MR. FOGELGAREN: Yes.

A. I don't recall.

Q. Was Detective Barnych the only other person in the vehicle with you at that time?

MS. NAPOLITANO: At what time?

MR. FOGELGAREN: At the time you first arrived at the location in the car.

A. Yes. Me and Detective Barnych, it was just us two, that drove there in that car.

Q. Do you know if Detective Barnych notified anybody of arriving at that location?

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A. I don't know.

Q. Up until the point you left that location, do you recall anything else occurring at that scene?

A. Nothing specific that I can recall, no.

Q. Was Officer Vara still at that scene when you left that scene?

A. I don't recall.

Q. Did you ever see Officer Buonora at that scene?

A. I don't recall seeing him there.

Q. While you were at that driveway at that location before you left, did you learn of any involvement of Officer Buonora in the events at that location?

MR. WEINGARD: Objection as to form.

A. I don't recall.

Q. Do you recall where you went to after you left that location?

A. Yes.

Q. Where did you go?

A. We went in the same car to a

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Occhino

house in Nassau County. I believe it was Uniondale or Roosevelt or somewhere near that vicinity.

Q. When you say "we," who else was with you?

MR. WEINGARD: I was going to say did we establish that.

A. Detective Barnych and I.

Q. Was there anybody else with you from any police department besides Detective Barnych?

A. In the car?

MR. FOGELGAREN: Yes.

A. No.

MR. WEINGARD: I am going to stop for one moment. Where was it that they went; they went to a house?

MR. FOGELGAREN: In Nassau County, Uniondale or Roosevelt.

MR. WEINGARD: Thank you.

Q. Do you know how you were provided the information with this particular house in Nassau County in Uniondale or Roosevelt?

A. Detective Barnych had the

Occhino

information.

Q. Did Detective Barnych explain to you why you were going over there?

A. I knew and know that it was -- this house we were responding to was somehow in connection to this event that was being investigated.

Q. Did you learn if you were going to speak to somebody at that house?

MS. NAPOLITANO: Objection to form.

You can answer.

A. I don't remember the specifics, but going to that house somehow would or hopefully lead to, directly or indirectly, the subject who fled the scene on foot.

Q. What information did you know at that time while you were in the car about the subject in question?

A. I don't recall his -- at that time, I don't recall what I knew about him, his pedigree. I don't recall.

Q. Do you know if a driver's license of the subject had been recovered at the scene

Occhino

at Jericho Turnpike and Holland Avenue?

A. I don't recall.

Q. Did you arrive at this house in Uniondale or Roosevelt?

A. Yes.

Q. Did any other cars, police cars, respond to that location at that time?

MR. WEINGARD: Before we take an answer, can we just get some sort of a time frame, what approximate time it was during the day?

MR. FOGELGAREN: Okay. I think I asked him earlier.

Q. Do you recall what time of day you were at that driveway on Holland Avenue?

A. No.

Q. Do you know how much time it took from the time you left that house up to the point in time you got to the house at Uniondale or Roosevelt?

A. No.

Q. Do you know whether it was daytime or nighttime?

A. It was daytime, early -- it could

Occhino

have been late morning into early afternoon perhaps. It was still during that day tour.

Q. When you arrived at this house in Uniondale or Roosevelt, what did you do?

A. We got out of the car. I believe we knocked on the door or rang a doorbell. Detective Barnych did speak to at least one person at that home.

Q. You also got out of the car?

A. Yes.

Q. Were you with Detective Barnych when he spoke to that person or persons?

A. I was with him. I don't know how close or far away, but I was obviously in that immediate vicinity.

Q. Did you hear any conversations that occurred between Detective Barnych and anybody who was at that house?

A. I was in earshot, and I don't recall what conversation -- specifics of the conversation that took place.

Q. Did Detective Barnych tell you any information he had learned?

A. He probably did, and I don't

Occhino

remember what information he learned and/or what he told me.

Q. How long did you remain at that house for?

A. I don't know.

Q. Besides these conversations that Detective Barnych had, do you recall anything else that occurred at that house?

A. No.

Q. Were you and Detective Barnych the only police officers who were present at that house at that time?

A. I don't recall.

Q. Did you speak to anybody else from the Nassau County Police Department, whether by telephone, radio, while you were at that house at Uniondale or Roosevelt?

A. It's possible. I don't recall.

Q. Do you know if Detective Barnych contacted or spoke to anybody with the Nassau County Police Department while he was at that location at the house in Uniondale or Roosevelt?

A. Again, it's possible, but I don't

Occhino

recall.

Q. Did you make any notes while you were at that house at Uniondale or Roosevelt?

A. I don't recall.

Q. Do you know if Detective Barnych made any notes?

A. I don't recall.

Q. Where did you go after you left that house in Uniondale or Roosevelt?

A. I don't recall.

Q. Do you recall doing anything else with respect to this investigation on that day?

A. It's possible that we did, him and/or I, but I don't recall.

Q. Did there come a time that day on October 9, 2004 that you returned to your station house?

A. Yes.

Q. Do you recall about what time that was?

A. No.

Q. Do you know when your tour ended that day?

Occhino

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2 A. Give or take, it would be --
3 again, day tours have changed slightly over
4 the years, give or take 5 p.m.

5 Q. Would you have arrived at your
6 station house before 5 p.m. that day?

7 A. Yes, probably yes.

8 Q. Do you know if you worked any
9 overtime that day?

10 A. No. I don't believe I did.

11 Q. When you arrived at your station
12 house prior to the end of the tour, do you
13 recall what you did on that day?

14 A. No. It probably was a lot of
15 work, but I don't recall what.

16 Q. Did you have a usual custom and
17 practice about that time of what you would do
18 when you returned to the station house at the
19 end of a day like that?

20 MS. NAPOLITANO: Objection to
21 form.

22 You can answer.

23 A. Well, I mean normally --
24 obviously every day is different, but it's a
25 very, very, very busy squad, perhaps the

Occhino

busiest in Nassau County, so I could say with certainty that every day there are many things to do, many cases, many phone calls, many complainants.

Q. Would you have filled out any paperwork as to what you did on that tour that day?

A. No, other than if, as you asked before, if I possibly took any handwritten notes, that would be it, if I did.

Q. Did you keep a sheet of where you were at times on that day?

MS. NAPOLITANO: Objection to form.

You can answer.

A. A sheet? I don't know what that means, but like when you leave the station house or you get there, there's a blotter. You know, you sign out, if that's what you're referring to.

Q. What information is contained on the blotter?

A. The time that you're going out, that you're leaving, you know. For example,

Occhino

for example, 0900 Detective Occhino out to Hempstead.

Q. Would you have put on that blotter when you left to go to that location at Jericho Turnpike and Holland Avenue in Floral Park?

A. Yes. But to clarify, it could be me and/or Detective Barnych.

Q. If Detective Barnych had indicated that he was going, would he have indicated that you were also going with him?

MS. NAPOLITANO: Objection.

MR. WEINGARD: Objection.

A. That's very possible.

Q. Did you learn if a person was arrested with regard to what had occurred at the Jericho Turnpike/Holland Avenue location?

MS. NAPOLITANO: Objection to form.

You can answer.

MR. WEINGARD: I join in it.

A. Obviously.

Q. When did you learn the person had been arrested?

Occhino

A. I don't recall.

Q. Did you do any paperwork with regard to the arrest?

A. No. If I may clarify, again, "paperwork," a broad term. Again referring to notes, if that counts, if I took notes, then the answer would be yes, but specifically the arrest paperwork, no.

Q. Do you know who the arresting officer was on that case?

A. No.

Q. Do you know if Detective Barnych played some role with regard to the arrest?

A. Yes.

MS. NAPOLITANO: Objection.

Q. What is your understanding of what Detective Barnych did?

A. Well, it's his case, so he would be -- how do I say? An integral part of the arrest process.

Q. Did he ask you for assistance with regard to anything with regard to the arrest?

A. I don't recall. I was not there

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Occhino

for the arrest processing.

Q. Did you ever speak to Officer
Vara about the case after the arrest was made?

A. To my best recollection, no.

Q. Did you ever speak to Officer
Buonora about this case after the arrest was
made?

A. No.

Q. Was Police Officer Vara ever
interviewed about what had occurred at Holland
Avenue/Jericho Turnpike in Floral Park?

MR. WEINGARD: Objection.

MS. NAPOLITANO: Objection.

A. By who?

MR. FOGELGAREN: I'll rephrase
it.

Q. Were you present at any time when
Officer Vara was interviewed with regard to
the events that occurred at Jericho Turnpike
and Holland Avenue at Floral Park on October
9th of 2004?

MS. NAPOLITANO: Objection.

A. I don't understand that question.
(Discussion off the record.)

Occhino

(Occhino Exhibit 1, Document
Bates-stamped Nassau County 000001
through 000016, marked for
identification.)

(Occhino Exhibit 2, Document
Bates-stamped Nassau County 000355
through 000358, marked for
identification.)

Q. I am going to show you what has
been marked as Exhibit Occhino 1 (handing).

MR. WEINGARD: May I have a
moment to look this over before we
start?

MR. FOGELGAREN: Sure.

(Counsel perusing document.)

MR. WEINGARD: Thanks.

Q. So you've taken a look at what's
been marked as Plaintiff's Exhibit Occhino 1.
Just look at the front page for a second. Can
you identify the form of the document?

MR. WEINGARD: I'm sorry. Was
that Occhino 1 or Occhino 2?

MR. FOGELGAREN: Occhino 1.

MS. NAPOLITANO: What did you ask

Occhino

him?

MR. FOGELGAREN: If he could
identify the form.

A. It's an arrest report, sometimes
called an 81.

Q. And this arrest report, who is it
on; who is the subject of this particular
arrest report?

A. Darryl T. Coggins.

Q. Do you know who would fill out
the information for this arrest report?

MS. NAPOLITANO: Objection to
form.

MR. FOGELGAREN: Strike that.

Q. Do you know who filled out the
information for this particular arrest report?

A. May I look at it?

MR. FOGELGAREN: Absolutely,
please.

A. Detective Barnych.

Q. Going to the second page of the
report, it's marked page 2. It's also
Bates-stamped Nassau County 000002. Do you
see that?

Occhino

A. Yes.

Q. In the middle of the page there's the word "testimonials."

A. (Witness nodding.)

MS. NAPOLITANO: Say yes.

A. Yes.

Q. Were you familiar with part of the form labeled "testimonials"?

A. Yeah, sure.

Q. What information is to be recorded in that section of the form?

A. Who is involved with the arrest and/or the case.

Q. Do you know who filled that portion out?

A. No. I didn't.

Q. Have you ever seen this prior to today?

A. Possibly. I don't recall.

Q. Now, there's an arresting detective listed; is that correct?

A. Yes.

Q. Who is that?

A. Alexander Barnych.

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Q. The defendant is also listed there. Is there any reason for that?

A. That's normal. It's supposed to be that way.

Q. Who are supposed to be listed in the testimonial section?

A. People, persons, involved in the case.

Q. In this arrest report, who decided who would be included in this testimonial section?

MS. NAPOLITANO: Objection.

You can answer.

A. I don't know, not me.

Q. Are you listed in the testimonial section?

A. Yes.

Q. It indicates "nature of testimony." It says, "Responded to scene, assisted in interviews with PO Vara and remaining witnesses/passengers of subject auto." Do you see that?

A. Yes.

Q. Do you recall assisting in an

Occhino

interview of Police Officer Vara at that scene?

A. I was there when he was speaking, so it's how you define that. But specifically, I don't recall.

Q. Do you recall if you asked him any questions, if you asked Officer Vara any questions?

A. I don't recall.

Q. Did you say anything to Officer Vara at that time?

A. It's possible. I don't recall.

Q. Do you recall assisting in interviews of the remaining witnesses at that scene?

A. No.

MR. WEINGARD: Objection as to form.

A. No.

Q. Do you recall assisting in interviews of the passengers of the subject auto at that scene?

A. I don't even think they were there when I got there.

Occhino

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2 Q. I am going to show you what has
3 been marked as Occhino 2 and ask if you can
4 identify this document, which is four pages,
5 and it's marked with Nassau County Bates stamp
6 000355, 000356, 000357 and 000358?

7 A. I'm sorry?

8 Q. Can you identify that document?

9 A. Yes.

10 Q. What is it?

11 A. It's the letter that I wrote to
12 the Internal Affairs Unit regarding this case.

13 Q. This is a four-page document; is
14 that correct?

15 A. Yes.

16 Q. And the handwriting in this
17 document, is that your handwriting?

18 A. Yes, sir.

19 Q. Is that your handwriting on the
20 entire document?

21 A. Well, on the last page there's a
22 couple of words or -- you know, that's not me
23 (indicating). But yeah, for the most part,
24 yes.

25 Q. Did you sign the document?

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A. Yes.

Q. You signed it on what page?

A. I signed it on page 4, and I initialed it on -- I initialed it on page 1, page 2, page 3.

Q. Do you recall what date you filled out this document?

A. If I refer to the document.

MR. FOGELGAREN: You may, please.

A. December 14, 2005.

Q. Do you recall where this document was filled out?

A. At the Internal Affairs Unit, which is at police headquarters.

Q. Were you notified that you had to appear at the Internal Affairs Unit with regard to this matter at some point in time before December 14, 2005?

A. Of course.

Q. Do you recall how long before?

A. No.

Q. Do you know who notified you?

A. I don't recall.

Q. After you were notified and prior

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to appearing at the Internal Affairs Unit, did you speak to anybody from the Nassau County Police Department with regard to appearing at the Internal Affairs Unit?

MS. NAPOLITANO: Objection.

You can answer.

A. Before responding there?

MR. FOGELGAREN: Yes.

A. Did I speak to anyone?

MR. FOGELGAREN: Yes.

A. I'm sure I did.

Q. Do you know who you spoke to?

A. Well, I would have spoken to a union rep, because whenever you go to Internal Affairs, you have to notify the union and their detectives, so in that regard, yes.

Q. Did you speak to Detective Barnych about appearing before Internal Affairs?

A. It's possible. I don't recall the specifics, though, regarding that.

Q. Do you recall anything in general about any conversations you had with Detective Barnych?

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A. No.

Q. Did you speak to any other members of the police department about appearing in front of the Internal Affairs Unit prior to December 14, 2005?

A. I don't recall.

Q. Did you speak to Officer Vara about it?

A. No.

Q. Did you speak to Officer Buonora about it?

A. No.

Q. Up to December 14, 2005, had you ever had any conversations with Officer Vara about the incident at Jericho Turnpike and Holland Avenue in Floral Park on October 9, 2004?

MR. WEINGARD: Objection, if he's going to talk about contact. No objection if he's just being asked whether he had a conversation.

Q. Did you ever have a conversation with Officer Vara?

A. Any kind of conversation?

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Q. About this incident.

A. I don't recall ever having a conversation with him about this incident.

Q. Same question with regard to Officer Buonora.

A. Same answer. I don't recall.

MS. NAPOLITANO: Let him finish.

Q. Who did you speak to at the Internal Affairs Unit?

A. I don't recall.

Q. Who was with you when you appeared before the Internal Affairs Unit?

A. A union rep would be with me. That's just how it is. I don't recall who it was. And I don't recall if a lawyer came also or not, but a union rep was with me.

Q. Do you recall who from the Internal Affairs Unit saw you at that time?

A. I could only say it was a detective sergeant.

Q. Was it just one member of the Internal Affairs Unit that saw you?

A. It could have been two, so I don't recall.

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Q. Were you questioned about what occurred on October 9, 2004 at that time, on December 14, 2005?

A. Of course, yes.

Q. The statement that you wrote, was that prepared before, during or after the questioning by the Internal Affairs Unit?

A. To my best recollection, it was prepared after the questioning by the Internal Affairs Unit.

Q. Did you see the Internal Affairs Unit on one occasion or more than one occasion?

A. I'm sorry. I'm thinking.

MS. NAPOLITANO: You're allowed to think.

A. To my best recollection, it was once.

Q. I am referring to page 1 of exhibit Occhino 2. You state that Detective Barnych was responsible for catching cases on that tour. What does the term "catching cases" mean?

A. Okay. I'll explain, and just

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please make note that that varies also.

Q. Well, let me ask you this. With regard to this particular matter, could you explain what "catching cases" meant?

A. Yes. Cases, events that are sent to the squad to be a squad case, a detective, possibly one, will be assigned for a particular day, to assign those cases to him for that day or for that tour. So if Detective Barnych was catching cases on a certain day, any case sent up to the squad to be investigated would be assigned to Detective Barnych.

Q. There's a paragraph on page 1 which starts with the number 3. It's a little more than halfway down. Do you see it?

A. Yes.

MR. WEINGARD: Which exhibit?

MR. FOGELGAREN: Again, Occhino

2.

Q. It says, "At approximately 8:30 a.m. I accompanied Detective Barnych from the 3rd Squad to the incident location on Jericho Turnpike in Floral Park." Do you see that?

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A. Yes.

Q. Was that an accurate statement as to when you went to the location?

MS. NAPOLITANO: Objection.

You can answer.

A. Yes.

Q. The next line says that you learned that the incident which the suspect fled had occurred about four hours earlier; is that correct?

A. Yes.

MR. WEINGARD: I am going to object to the form of the questions. If you're asking him whether or not he has a recollection based on a review of the document, that's one thing. If you ask him whether it's a correct statement, that's totally different.

Q. The information that you placed on this statement, the facts, where did you obtain those facts; was it from your personal recollection, did you review anything, did you speak to anybody?

MR. WEINGARD: Objection to the

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form of the question.

A. I don't recall.

Q. When you filled out this form, the facts that you put on with regard to your recollections, did you believe them to be accurate at that time?

A. Yes.

Q. Do you believe them to be accurate now?

A. Yes.

Q. How did you learn that the incident --

MR. WEINGARD: I am going to continue my objection with regard to form. If you're asking him whether it refreshes his recollection, that's one thing. If you ask him whether or not it's accurate, it's a totally different thing. One is permissible, in my view, and the other is not.

MR. FOGELGAREN: Well, speaking objections also are not permissible during a deposition. You can note your objections.

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MR. WEINGARD: I am noting it.

MR. FOGELGAREN: I am just saying the reasoning is what -- like I said, speaking objections are not permissible.

Q. From what did you learn the incident from where the suspect fled occurred four hours earlier?

MS. NAPOLITANO: Objection to form.

MR. WEINGARD: Join in it.

Q. You indicated on this form that the incident from where the suspect fled occurred four hours earlier. Did you mean it occurred four hours earlier when you got to the scene?

MR. WEINGARD: Objection as to form.

MS. NAPOLITANO: Objection to form.

You can answer.

A. Yes.

Q. How did you obtain that information?

A. I don't know.

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Q. At the time you filled out this statement, did you know where you got that information from?

A. I don't recall.

Q. Going to page 2, paragraph 4, you indicated that Officer Vara informed Detective Barnych of information about the stop; is that correct?

A. Yes.

Q. Was that based on a conversation that you heard between Detective Barnych and Officer Vara at that time?

MS. NAPOLITANO: Objection as to form.

MR. WEINGARD: Join.

A. Possibly. I don't recall.

Q. In that paragraph, the initials SFST are used. Do you see that?

A. Yes.

Q. What does that stand for?

A. I believe it stands for standardized field sobriety test.

Q. Did you hear Officer Vara say anything at the site at Jericho Turnpike and

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Holland Avenue on October 9, 2004 with regard to a DWI investigation going on?

A. Right now at this moment, I recall I was within earshot when he spoke out loud to Detective Barnych. As I look at my statement here to recall, SFST was given by PO Vara to the subject that fled.

Q. The statement also, I think on the fifth line from the bottom, indicates that Detective Michael Fannon was of the Crime Scene Unit. Was that correct?

A. Yes.

Q. You also indicated a ring was recovered?

A. Yes.

Q. How did you learn that?

A. I don't recall.

MR. WEINGARD: I am going to object as to form.

A. I don't recall.

Q. Going to paragraph 6 on page 3, you stated that you had no involvement in the arrest of Darryl Coggins.

A. Correct.

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2 Q. In that same paragraph you also
3 stated that you had no involvement in the
4 arrest processing of Darryl Coggins; is that
5 correct?

6 A. Correct.

7 Q. Did you ever speak to Darryl
8 Coggins?

9 A. Never.

10 Q. Now, in paragraph 7 you stated
11 that you were not subpoenaed by the district
12 attorney for testimony in any grand jury
13 proceedings against Darryl Coggins; is that
14 correct?

15 A. Yes.

16 Q. Did you speak to any members of
17 the district attorney's office with regard to
18 the facts and circumstances of what occurred
19 at Jericho Turnpike and Holland Avenue in
20 Floral Park on October 9, 2004? And this is
21 prior to the grand jury presentation, the
22 initial grand jury presentation, after the
23 arrest of Darryl Coggins.

24 A. I don't recall the time frame. I
25 spoke to someone from the district attorney's

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office, but I don't remember when.

Q. Do you recall who you spoke to at the district attorney's office?

A. To my best recollection --

MS. NAPOLITANO: You know what he's asking you, right, what grand jury he's asking you about?

MR. FOGELGAREN: It wasn't a particular grand jury. I'll withdraw the question.

Q. You indicated you spoke to an assistant DA at some point in time; is that correct?

A. Yes.

Q. Do you recall when that was?

A. No.

Q. Do you recall if there was a subsequent grand jury convened to investigate what occurred on October 9, 2004?

A. Yes.

MS. NAPOLITANO: I am going to object.

MR. WEINGARD: I join in it.

Q. Did you speak to an assistant

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district attorney at that time?

MS. NAPOLITANO: Objection.

MR. WEINGARD: I join.

A. I spoke to an assistant district attorney. I don't remember when. It was regarding this incident.

Q. Going to page 4 of your statement, take a look at that. Actually, starting at paragraph 8 on page 3. Take a look at that whole paragraph through page 9.

A. Yeah.

Q. Did you ever meet with Assistant DA James Clark?

A. Yes.

Q. Do you recall when you met Assistant DA James Clark --

A. No.

Q. -- with regard to this matter?

A. No.

Q. What was the reason you met with Assistant DA James Clark?

A. I don't know. I had to.

Q. Do you recall the conversation you had with Assistant DA James Clark with

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regard to this matter?

A. I recall sitting down with him and him asking me questions regarding this matter, and I recall him showing me some photos of the driveway where the gun was.

Q. Did he indicate to you what he was investigating at that time?

A. It's possible. I don't recall what he said specifically what he was investigating, but it was obvious that it involved this case.

Q. Do you know what he was investigating about this case at that time?

MS. NAPOLITANO: Objection to form.

You can answer.

A. There were police officers potentially that are in trouble, and he was investigating that.

Q. Do you know which police officers were in trouble?

A. It was PO Vara and/or PO Buonora, one or both.

Q. Did you have an understanding of

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what type of trouble Police Officer Vara might be in at that time?

A. I don't recall specifically what type of trouble he was in, no.

Q. Do you have any general recollection at that time of what type of trouble he might have been in?

A. I believe, to my recollection, there was a problem regarding the recovery of the gun.

Q. Did you understand what the problem regarding the recovery of the gun was?

MR. WEINGARD: That's pure speculation, object.

A. I don't recall.

Q. Do you know if Police Officer Buonora was being investigated at the time you spoke to Assistant DA James Clark?

A. I believe that it was PO Vara and/or PO Buonora.

Q. Do you know what about PO Buonora was being investigated at that time?

A. Not specifically, but again, I knew there was some sort of problem with the

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gun.

Q. At the time you spoke to Assistant DA James Clark, did you have any conversation about Officer Buonora with Assistant DA James Clark?

A. It's possible. I don't remember. He asked me questions. I'm sure PO Buonora and PO Vara's name came up, but I don't remember specifically what he asked me.

Q. Occhino 2, Exhibit Occhino 2, your statement, was this statement written after you spoke to Assistant DA James Clark?

A. I don't remember. I don't recall.

Q. At the time you wrote this statement, did you have any knowledge of whether Detective Buonora had been involved in the events on October 9, 2004?

MR. WEINGARD: Objection.

THE WITNESS: PO Buonora?

MR. FOGELGAREN: Yes.

THE WITNESS: You said "detective."

MR. FOGELGAREN: I'm sorry, PO

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Buonora.

THE WITNESS: Repeat the question, please.

MR. WEINGARD: Objection; calls for speculation.

Q. On October 9, 2004, did you have any information or any knowledge as to whether Police Officer Buonora was involved in the events on October 9, 2004 in Floral Park?

A. It's possible. I don't recall.

Q. Well, on your statement, December 14, 2005, did you indicate anything about Police Officer Buonora's involvement?

A. I would have to --

MR. FOGELGAREN: Take a look.

MR. WEINGARD: I am going to object. The witness has testified that he doesn't know whether he prepared that before or after speaking with the ADA. So unless you can tell us when he spoke to the ADA, it doesn't have relevance.

MR. FOGELGAREN: We will decide whether or not it has relevance at some point in time.

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MR. WEINGARD: And also I object

as to form.

A. On October 9th?

Q. Well, the report is dated
December -- yes.

A. But on October 9th I don't recall
seeing Officer Buonora, seeing him there.

Q. I am just asking about what is
included in your statement, that's all. I was
asking if there was anything included about
Detective Buonora in your statement?

A. Buonora?

MR. WEINGARD: Continue the
objection, please.

A. I don't see his name, unless I'm
making an error. I don't see his name
anywhere.

Q. After October 9, 2004, did you
have any role in investigating the incident on
October 9, 2004 at Jericho Turnpike in Floral
Park and Holland Avenue?

MS. NAPOLITANO: Objection to
form.

You can answer.

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MR. WEINGARD: I join in it.

A. No.

Q. Did you learn what happened to the prosecution of Darryl Coggins?

A. No. Do you mean what he was charged with?

Q. Do you know what he was charged with?

A. No. I would have to refer (indicating).

Q. Do you know what ever happened as a result of those charges; do you know if he was ever convicted, acquitted?

A. I could only speculate.

MS. NAPOLITANO: Don't speculate.

Q. I am not asking you to speculate.

A. No, no.

MR. FOGELGAREN: I have no further questions at this time.

MS. NAPOLITANO: Are you keeping it open?

RQ MR. FOGELGAREN: Yes. Obviously, I also want to get the entire file of the Internal Affairs Unit with regard to

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the investigation of this case, and if there's anything at that time that we see, we will let you know.

MS. NAPOLITANO: Mr. Weingard, do you have questions?

MR. WEINGARD: Give me one minute, but I think I'm okay.

No, thank you. No questions at this time.

(Time noted: 12:44 p.m.)

Occhino

A C K N O W L E D G M E N T

STATE OF NEW YORK)
 :ss
COUNTY OF)

I, NICHOLAS OCCHINO, hereby certify
that I have read the transcript of my
testimony taken under oath in my deposition of
February 25, 2010; that the transcript is a
true, complete and correct record of my
testimony, and that the answers on the record
as given by me are true and correct.

NICHOLAS OCCHINO

Signed and subscribed to before
me, this day
of , 2010.

Notary Public, State of New York

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-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
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NICHOLAS OCCHINO MR. FOGELGAREN 4

-----DOCUMENT REQUEST-----

PAGE 85 Entire file of Internal Affairs
Unit

-----INFORMATION TO BE FURNISHED-----

PAGE 10 Date received Associate's degree
from Nassau Community College

-----EXHIBITS-----

OCCHINO FOR I.D.

1 Document Bates-stamped Nassau
County 000001 through 000016 60

2 Document Bates-stamped Nassau
County 000355 through 000358 60

(Counsel retained exhibits.)

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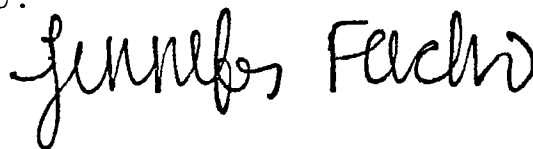
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, JENNIFER FUCHS, a Notary
Public within and for the State of New
York, do hereby certify:

That NICHOLAS OCCHINO, the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 7th day of
March, 2010.



JENNIFER FUCHS